

106TH CONGRESS
2D SESSION

H. R. 4971

To amend the Internal Revenue Code of 1986 to facilitate competition in the electric power industry.

IN THE HOUSE OF REPRESENTATIVES

JULY 26, 2000

Mr. HAYWORTH (for himself, Mr. ENGLISH, Mr. MATSUI, Mr. WELLER, Mr. NEAL of Massachusetts, Mr. RAMSTAD, Mrs. THURMAN, Mr. HERGER, Mr. WATKINS, Mrs. JOHNSON of Connecticut, and Mr. SHAW) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To amend the Internal Revenue Code of 1986 to facilitate competition in the electric power industry.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Electric Power Indus-
5 try Tax Modernization Act”.

6 **SEC. 2. TAX-EXEMPT BOND FINANCING OF CERTAIN ELEC-**
7 **TRIC FACILITIES.**

8 (a) RULES APPLICABLE TO ELECTRIC OUTPUT FA-
9 CILITIES.—Subpart A of part IV of subchapter B of chap-

ter 1 of the Internal Revenue Code of 1986 (relating to
 tax exemption requirements for State and local bonds) is
 amended by inserting after section 141 the following new
 section:

“SEC. 141A. ELECTRIC OUTPUT FACILITIES.

“(a) ELECTION TO TERMINATE TAX-EXEMPT BOND
 FINANCING FOR CERTAIN ELECTRIC OUTPUT FACILI-
 TIES.—

“(1) IN GENERAL.—A governmental unit may
 make an irrevocable election under this paragraph to
 terminate certain tax-exempt financing for electric
 output facilities. If the governmental unit makes
 such election, then—

“(A) except as provided in paragraph (2),
 on or after the date of such election the govern-
 mental unit may not issue with respect to an
 electric output facility any bond the interest on
 which is exempt from tax under section 103,
 and

“(B) notwithstanding paragraph (1) or (2)
 of section 141(a) or paragraph (4) or (5) of
 section 141(b), no bond that was issued by such
 unit with respect to an electric output facility
 before the date of enactment of this subsection
 (or which is described in paragraph (2)(B), (D),

1 (E) or (F)) the interest on which was exempt
2 from tax on such date, shall be treated as a pri-
3 vate activity bond.

4 “(2) EXCEPTIONS.—An election under para-
5 graph (1) does not apply to any of the following
6 bonds:

7 “(A) Any qualified bond (as defined in sec-
8 tion 141(e)).

9 “(B) Any eligible refunding bond (as de-
10 fined in subsection (e)).

11 “(C) Any bond issued to finance a quali-
12 fying transmission facility or a qualifying dis-
13 tribution facility.

14 “(D) Any bond issued to finance equip-
15 ment or facilities necessary to meet Federal or
16 State environmental requirements applicable to
17 an existing generation facility.

18 “(E) Any bond issued to finance repair of
19 any existing generation facility. Repairs of fa-
20 cilities may not increase the generation capacity
21 of the facility by more than 3 percent above the
22 greater of its nameplate or rated capacity as of
23 the date of enactment of this section.

24 “(F) Any bond issued to acquire or con-
25 struct (i) a qualified facility, as defined in sec-

tion 45(c)(3), if such facility is placed in service during a period in which a qualified facility may be placed in service under such section, or (ii) any energy property, as defined in section 48(a)(3).

“(3) FORM AND EFFECT OF ELECTION.—

“(A) An election under paragraph (1) shall be made in such a manner as the Secretary prescribes and shall be binding on any successor in interest to, or any related party with respect to, the electing governmental unit. For purposes of this paragraph, a governmental unit shall be treated as related to another governmental unit if it is a member of the same controlled group.

“(B) A governmental unit that makes an election under paragraph (1) shall be treated for purposes of section 141 as a person that is not a governmental unit and that is engaged in a trade or business, with respect to its purchase of electricity generated by an electric output facility placed in service after such election, if such purchase is under a contract executed after such election.

“(4) DEFINITIONS.—For purposes of this subsection:

1 “(A) EXISTING GENERATION FACILITY.—

2 The term ‘existing generation facility’ means an
3 electric generation facility in service on the date
4 of enactment of this subsection or construction
5 of which commenced prior to June 1, 2000.

6 “(B) QUALIFYING DISTRIBUTION FACIL-

7 ITY.—The term ‘qualifying distribution facility’
8 means a distribution facility over which open
9 access distribution services described in sub-
10 section (b)(2)(C) are provided.

11 “(C) QUALIFYING TRANSMISSION FACIL-

12 ITY.—The term ‘qualifying transmission facil-
13 ity’ means a local transmission facility over
14 which open access transmission services de-
15 scribed in subsection (b)(2)(A), (B), or (E) are
16 provided.

17 “(b) PERMITTED OPEN ACCESS ACTIVITIES AND
18 SALES TRANSACTIONS NOT A PRIVATE BUSINESS USE
19 FOR BONDS THAT REMAIN SUBJECT TO PRIVATE USE
20 RULES.—

21 “(1) GENERAL RULE.—For purposes of this
22 section and section 141, the term ‘private business
23 use’ shall not include a permitted open access activ-
24 ity or a permitted sales transaction.

1 “(2) PERMITTED OPEN ACCESS ACTIVITIES.—

2 For purposes of this section, the term ‘permitted
3 open access activity’ means any of the following
4 transactions or activities with respect to an electric
5 output facility owned by a governmental unit:

6 “(A) Providing nondiscriminatory open ac-
7 cess transmissionservice and ancillary
8 services—

9 “(i) pursuant to an open access trans-
10 mission tariff filed with and approved by
11 FERC, but, in the case of a voluntarily
12 filed tariff, only if the governmental unit
13 voluntarily files a report described in 18
14 CFR 35.34(c) or (h) or successor provision
15 (relating to whether or not the issuer will
16 join a regional transmission organization)
17 not later than the later of the applicable
18 date prescribed in such sections or 60 days
19 after enactment of this section;

20 “(ii) under an independent system op-
21 erator, regional transmission organization
22 or regional transmission group agreement
23 approved by FERC; or

24 “(iii) in the case of an ERCOT utility
25 (as defined in section 212 (k) of the Fed-

1 eral Power Act), pursuant to a tariff ap-
2 proved by the Public Utility Commission of
3 Texas.

4 “(B) Participation in—

5 “(i) an independent system operator
6 agreement,

7 “(ii) a regional transmission organiza-
8 tion agreement, or

9 “(iii) a regional transmission group,
10 that has been approved by FERC, or by the
11 Public Utility Commission of Texas in the case
12 of an ERCOT utility. Such participation may
13 include transfer of control of transmission fa-
14 cilities to an organization described in clause
15 (i), (ii), or (iii).

16 “(C) Delivery on a nondiscriminatory open
17 access basis of electric energy sold to end-users
18 served by distribution facilities owned by such
19 governmental unit.

20 “(D) Delivery on a nondiscriminatory open
21 access basis of electric energy generated by gen-
22 eration facilities connected to distribution facili-
23 ties owned by such governmental unit.

24 “(E) Other transactions providing non-
25 discriminatory open access transmission or dis-

1 tribution services under Federal, State, or local
2 open access, retail competition or similar pro-
3 grams, to the extent provided in regulations
4 prescribed by the Secretary.

5 “(3) PERMITTED SALES TRANSACTION.—For
6 purposes of this subsection, the term ‘permitted
7 sales transaction’ means any of the following sales of
8 electric energy from existing generation facilities (as
9 defined in subsection (a)(4)(A)):

10 “(A) The sale of electricity to an on-system
11 purchaser, if the seller provides open access dis-
12 tribution service under paragraph (2)(C) and,
13 in the case of a seller that owns or operates
14 transmission facilities, if such seller provides
15 open access transmission under paragraph
16 (2)(A), (B), or (E).

17 “(B) The sale of electricity to a wholesale
18 native load purchaser or in a wholesale strand-
19 ed cost mitigation sale—

20 “(i) if the seller provides open access
21 transmission service described in para-
22 graph (2)(A), (B), or (E), or

23 “(ii) if the seller owns or operates no
24 transmission facilities and transmission
25 providers to the seller’s wholesale native

1 load purchasers provide open access trans-
2 mission service described in paragraph
3 (2)(A), (B), or (E).

4 “(4) DEFINITIONS AND SPECIAL RULES.—For
5 purposes of this subsection:

6 “(A) ON-SYSTEM PURCHASER.—The term
7 ‘on-system purchaser’ from a governmental unit
8 means a person whose electric facilities or
9 equipment are directly connected with trans-
10 mission or distribution facilities that are owned
11 by such governmental unit, and who—

12 “(i) purchases electric energy from
13 such governmental unit at retail and either
14 was within such unit’s distribution area in
15 the base year or is a person as to whom
16 the governmental unit has a service obliga-
17 tion, or

18 “(ii) is a wholesale native load pur-
19 chaser from such governmental unit.

20 “(B) WHOLESALE NATIVE LOAD PUR-
21 CHASER.—The term ‘wholesale native load pur-
22 chaser’ means a wholesale purchaser as to
23 whom the governmental unit had—

24 “(i) a service obligation at wholesale
25 in the base year, or

1 “(ii) an obligation in the base year
2 under a requirements contract, or under a
3 firm sales contract that has been in effect
4 for (or has an initial term of) 10 years or
5 more, but only to the extent in either case
6 such purchaser resells the electricity at re-
7 tail to persons within the purchaser’s dis-
8 tribution area.

9 “(C) WHOLESALE STRANDED COST MITI-
10 GATION SALE.—The term ‘wholesale stranded
11 cost mitigation sale’ means one or more whole-
12 sale sales made in accordance with clauses (i),
13 (ii), and (iii).

14 “(i) A governmental unit’s allowable
15 sales under this subparagraph during the
16 recovery period may not exceed the sum of
17 its annual load losses for each year of the
18 recovery period.

19 “(ii) The governmental unit’s annual
20 load loss for each year of the recovery pe-
21 riod is the amount (if any) by which—

22 “(I) sales in the base year to
23 wholesale native load purchasers that
24 do not constitute a private business
25 use, exceed

1 “(II) sales during that year of
2 the recovery period to wholesale native
3 load purchasers that do not constitute
4 a private business use.

5 “(iii) If actual sales under this sub-
6 paragraph during the recovery period are
7 less than allowable sales under clause (i),
8 the amount not sold (but not more than 10
9 percent of the aggregate allowable sales
10 under clause (i)) may be carried over and
11 sold as wholesale stranded cost mitigation
12 sales in the calendar year following the re-
13 covery period.

14 “(D) RECOVERY PERIOD.—The recovery
15 period is the 7 year period beginning with the
16 start-up year.

17 “(E) START-UP YEAR.—The start-up year
18 is whichever of the following calendar years the
19 governmental unit elects:

20 “(i) The year the governmental unit
21 first offers open transmission access.

22 “(ii) The first year in which at least
23 10 percent of the governmental unit’s
24 wholesale customers’ aggregate retail na-
25 tive load is open to retail competition.

1 “(iii) The year of enactment of this
2 section, if later than the year described in
3 clause (i) or (ii).

4 “(F) PERMITTED SALES TRANSACTIONS
5 UNDER EXISTING CONTRACTS.—A sale to a
6 wholesale native load purchaser (other than a
7 person to whom the governmental unit had a
8 service obligation) under a contract that re-
9 sulted in private business use in the base year
10 shall be treated as a permitted sales transaction
11 only to the extent that sales under the contract
12 exceed (i) in any year the private business use
13 that resulted during the base year, or (ii) the
14 maximum amount of private business use that
15 could occur (absent the enactment of this sec-
16 tion) without causing the bonds to be private
17 activity bonds, whichever is less. This subpara-
18 graph shall only apply to the extent that the
19 sale is allocable to bonds issued prior to the
20 date of enactment of this section (or bonds
21 issued to refund such bonds).

22 “(G) JOINT ACTION AGENCIES.—A joint
23 action agency, or a member of (or a wholesale
24 native load purchaser from) a joint action agen-
25 cy, that is entitled to make a sale described in

1 subparagraph (A) or (B) in a year may transfer
 2 the entitlement to make that sale to the mem-
 3 ber (or purchaser), or the joint action agency,
 4 respectively.

5 “(c) CERTAIN BONDS FOR TRANSMISSION AND DIS-
 6 TRIBUTION FACILITIES NOT TAX EXEMPT.—

7 “(1) GENERAL RULE.—For purposes of this
 8 title, no bond the interest on which is exempt from
 9 taxation under section 103 may be issued on or after
 10 the date of enactment of this subsection if any of the
 11 proceeds of such issue are used to finance (A) any
 12 transmission facility that is not a local transmission
 13 facility, or (B) a start-up utility distribution facility.

14 “(2) EXCEPTIONS.—Paragraph (1) shall not
 15 apply to—

16 “(A) a qualified bond (as defined in section
 17 141(e)),

18 “(B) an eligible refunding bond (as defined
 19 in subsection (d)(6)), or

20 “(C) any bond issued to finance—

21 “(i) any repair of a transmission facil-
 22 ity in service on the date of enactment of
 23 this section, so long as the repair does not
 24 increase the voltage level over its level in
 25 the base year or increase the thermal load

1 limit of the transmission facility by more
2 than 3 percent over such limit in the base
3 year,

4 “(ii) any qualifying upgrade of a
5 transmission facility in service on the date
6 of enactment of this section, or

7 “(iii) a transmission facility necessary
8 to comply with an obligation under a
9 shared or reciprocal transmission agree-
10 ment in effect on the date of enactment of
11 this section.

12 “(3) LOCAL TRANSMISSION FACILITY DEFINI-
13 TIONS.—For purposes of this subsection—

14 “(A) LOCAL TRANSMISSION FACILITY.—
15 The term ‘local transmission facility’ means a
16 transmission facility which is located within the
17 governmental unit’s distribution area or which
18 is, or will be, necessary to supply electricity to
19 serve retail native load or wholesale native load
20 of one or more governmental units. For pur-
21 poses of this subparagraph, the distribution
22 area of a public power authority which was cre-
23 ated in 1931 by a State statute and which, as
24 of January 1, 1999, owned at least one-third of
25 the transmission circuit miles rated at 230 kV

1 or higher in the State, shall be determined
2 under regulations of the Secretary.

3 “(B) RETAIL NATIVE LOAD.—A govern-
4 mental unit’s ‘retail native load’ is the electric
5 load of end-users served by distribution facili-
6 ties owned by such governmental unit.

7 “(C) WHOLESALe NATIVE LOAD.—A gov-
8 ernmental unit’s ‘wholesale native load’ is the—

9 “(i) retail native load of such unit’s
10 wholesale native load purchasers, and

11 “(ii) electric load of purchasers (not
12 described in clause (i)) under wholesale re-
13 quirements contracts that (I) do not con-
14 stitute private business use under the rules
15 in effect absent this subsection, and (II)
16 were in effect in the base year.

17 “(D) NECESSARY TO SERVE LOAD.—For
18 purposes of determining whether a transmission
19 or distribution facility is, or will be, necessary
20 to supply electricity to retail native load or
21 wholesale native load—

22 “(i) electric reliability standards or re-
23 quirements of national or regional reli-
24 ability organizations, regional transmission
25 organizations and the Electric Reliability

1 Council of Texas shall be taken into ac-
2 count, and

3 “(ii) transmission, siting and con-
4 struction decisions of regional transmission
5 organizations or independent system opera-
6 tors and state and Federal agencies shall
7 be presumptive evidence regarding whether
8 transmission facilities are necessary to
9 serve native load.

10 “(E) QUALIFYING UPGRADE.—The term
11 ‘qualifying upgrade’ means an improvement or
12 addition to transmission facilities in service on
13 the date of enactment of this section that is or-
14 dered or approved by a regional transmission
15 organization, by an independent system oper-
16 ator, or by a state regulatory or siting agency.

17 “(4) START-UP UTILITY DISTRIBUTION FACIL-
18 ITY DEFINED.—For purposes of this subsection, the
19 term ‘start-up utility distribution facility’ means any
20 distribution facility to provide electric service to the
21 public that is placed in service, (A) by a govern-
22 mental unit that did not operate an electric utility
23 on the date of enactment of this section, and (B)
24 prior to the date on which such governmental unit
25 operates in a qualified service area (as such term is

1 defined in section 141(d)(3)(B)). A governmental
2 unit is deemed to have operated an electric utility on
3 the date of enactment of this section if it operates
4 electric output facilities that were operated by an-
5 other governmental unit to provide electric service to
6 the public on the date of enactment of this section.

7 “(d) DEFINITIONS; SPECIAL RULES.—For purposes
8 of this section—

9 “(1) BASE YEAR.—The term ‘base year’ means
10 the year of enactment of this section or, at the elec-
11 tion of the governmental unit, either of the two cal-
12 endar years immediately prior to the year of enact-
13 ment.

14 “(2) DISTRIBUTION AREA.—The term ‘distribu-
15 tion area’ means the area in which a governmental
16 unit owns distribution facilities.

17 “(3) ELECTRIC OUTPUT FACILITY.—The term
18 ‘electric output facility’ means an output facility
19 that is an electric generation, transmission, or dis-
20 tribution facility.

21 “(4) DISTRIBUTION FACILITY.—The term ‘dis-
22 tribution facility’ means an electric output facility
23 that is not a generation or transmission facility.

24 “(5) TRANSMISSION FACILITY.—The term
25 ‘transmission facility’ means an electric output facil-

1 ity (other than a generation facility) that operates at
2 an electric voltage of 69kV or greater, except that
3 the owner of the facility may elect to treat any out-
4 put facility that is a transmission facility for pur-
5 poses of the Federal Power Act as a transmission fa-
6 cility for purposes of this section.

7 “(6) ELIGIBLE REFUNDING BOND.—The term
8 ‘eligible refunding bond’ means State or local bonds
9 issued after an election described in subsection (a)
10 that directly or indirectly refund tax exempt bonds
11 (other than a qualified bond) issued before such
12 election, if the weighted average maturity of the re-
13 funding bonds does not exceed the remaining weight-
14 ed average maturity of the bonds issued before the
15 election. In applying such term for purposes of sub-
16 section (c)(2)(B), the date of election shall be
17 deemed to be the date of enactment of this section.

18 “(7) FERC.—The term ‘FERC’ means the
19 Federal Energy Regulatory Commission.

20 “(8) GOVERNMENT-OWNED FACILITY.—An elec-
21 tric output facility shall be treated as ‘owned by a
22 governmental unit’ if it is an electric output facility
23 that either is—

24 “(A) owned or leased by such govern-
25 mental unit, or

1 “(B) a transmission facility in which the
 2 governmental unit acquired prior to the base
 3 year long-term firm capacity for the purposes of
 4 serving customers to which the unit had at that
 5 time either (i) a service obligation or (ii) an ob-
 6 ligation under a requirements contract.

7 “(9) REPAIR.—The term ‘repair’ shall include
 8 replacement of components of an electric output fa-
 9 cility, but shall not include replacement of the facil-
 10 ity.

11 “(10) SERVICE OBLIGATION.—The term ‘service
 12 obligation’ means an obligation under State or Fed-
 13 eral law (exclusive of an obligation arising solely
 14 from a contract entered into with such person) to
 15 provide electric distribution services or electric sales
 16 service, as provided in such law.

17 “(e) SAVINGS CLAUSE.—Subsection (b) does not af-
 18 fect the applicability of section 141 to (or the Secretary’s
 19 authority to prescribe, amend, or rescind regulations re-
 20 specting) any transaction that is not a permitted open ac-
 21 cess transaction or permitted sales transaction.”

22 (b) REPEAL OF EXCEPTION FOR CERTAIN NON-
 23 GOVERNMENTAL ELECTRIC OUTPUT FACILITIES.—Sec-
 24 tion 141(d)(5) of such Code is amended by inserting “(ex-

cept in the case of an electric output facility that is a distribution facility),” after “this section”.

(c) EFFECTIVE DATE, APPLICABILITY.—

(1) EFFECTIVE DATE.—The amendments made by this section take effect on the date of enactment of this Act, except that a governmental unit may elect to apply section 141A(b)(1) and (2), as added by subsection (a), with respect to permitted open access activities entered into on or after April 14, 1996.

(2) CERTAIN EXISTING AGREEMENTS.—The amendment made by subsection (b) (relating to repeal of the exception for certain nongovernmental output facilities) does not apply to any acquisition of facilities made pursuant to an agreement that was entered into before the date of enactment of this Act.

(3) APPLICABILITY.—References in the Act to sections of the Internal Revenue Code of 1986, shall be deemed to include references to comparable sections of the Internal Revenue Code of 1954.

SEC. 3. INDEPENDENT TRANSMISSION COMPANIES.

(a) SALES OR DISPOSITIONS TO IMPLEMENT FEDERAL ENERGY REGULATORY COMMISSION OR STATE ELECTRIC RESTRUCTURING POLICY.—

1 (1) IN GENERAL.—Section 1033 of the Internal
2 Revenue Code of 1986 is amended by redesignating
3 subsection (k) as subsection (l) and by inserting
4 after subsection (j) the following new subsection:

5 “(k) SALES OR DISPOSITIONS TO IMPLEMENT FED-
6 ERAL ENERGY REGULATORY COMMISSION OR STATE
7 ELECTRIC RESTRUCTURING POLICY.—

8 “(1) IN GENERAL.—For purposes of this sub-
9 title, if a taxpayer elects the application of this sub-
10 section to a qualifying electric transmission trans-
11 action and the proceeds received from such trans-
12 action are invested in exempt utility property, such
13 transaction shall be treated as an involuntary con-
14 version to which this section applies.

15 “(2) EXTENSION OF REPLACEMENT PERIOD.—
16 In the case of any involuntary conversion described
17 in paragraph (1), subsection (a)(2)(B) shall be ap-
18 plied by striking ‘2 years’ and inserting ‘4 years’.

19 “(3) QUALIFYING ELECTRIC TRANSMISSION
20 TRANSACTION.—For purposes of this subsection, the
21 term ‘qualifying electric transmission transaction’
22 means any sale or other disposition of property used
23 in the trade or business of electric transmission, or
24 an ownership interest in a person whose primary
25 trade or business consists of providing electric trans-

mission services, to another person that is an independent transmission company.

“(4) INDEPENDENT TRANSMISSION COMPANY.—For purposes of this subsection, the term ‘independent transmission company’ means—

“(A) a regional transmission organization approved by the Federal Energy Regulatory Commission,

“(B) a person (i) who the Federal Energy Regulatory Commission determines in its authorization of the transaction under section 203 of the Federal Power Act is not a ‘market participant’ within the meaning of such Commission’s rules applicable to regional transmission organizations, and (ii) whose transmission facilities to which the election under this subsection applies are placed under the operational control of a Federal Energy Regulatory Commission-approved regional transmission organization within the period specified in such order, but not later than the close of the replacement period, or

“(C) in the case of facilities subject to the exclusive jurisdiction of the Public Utility Commission of Texas, a person that is approved by

1 that commission as consistent with Texas State
2 law regarding an independent transmission or-
3 ganization.

4 “(5) EXEMPT UTILITY PROPERTY.—For pur-
5 poses of this subsection, the term ‘exempt utility
6 property’ means—

7 “(A) property used in the trade or business
8 of generating, transmitting, distributing, or sell-
9 ing electricity or producing, transmitting, dis-
10 tributing, or selling natural gas, or

11 “(B) stock in a person whose primary
12 trade or business consists of generating, trans-
13 mitting, distributing, or selling electricity or
14 producing, transmitting, distributing, or selling
15 natural gas.

16 “(6) SPECIAL RULES FOR CONSOLIDATED
17 GROUPS.—

18 “(A) INVESTMENT BY QUALIFYING GROUP
19 MEMBERS.—This subsection shall apply to a
20 qualifying electric transmission transaction en-
21 gaged in by a taxpayer if the proceeds are in-
22 vested in exempt utility property by a qualifying
23 group member. A ‘qualifying group member’ is
24 any member of a consolidated group within the
25 meaning of section 1502 and the regulations

1 promulgated thereunder of which the taxpayer
2 is also a member.

3 “(B) COORDINATION WITH CONSOLIDATED
4 RETURN PROVISIONS.—A sale or other disposi-
5 tion of electric transmission property or an
6 ownership interest in a qualifying electric trans-
7 mission transaction, where an election is made
8 under this subsection, shall not result in the
9 recognition of income or gain under the consoli-
10 dated return provisions of subtitle A, chapter 6,
11 subchapter A hereof. The Secretary shall pre-
12 scribe such regulations as may be necessary to
13 provide for the treatment of any exempt utility
14 property received in a qualifying electric trans-
15 mission transaction as successor assets subject
16 to the application of such consolidated return
17 provisions.

18 “(7) ELECTION.—Any election made by a tax-
19 payer under this subsection shall be made by a
20 statement to that effect in the return for the taxable
21 year in which the qualifying electric transmission
22 transaction takes place in such form and manner as
23 the Secretary shall prescribe, and such election shall
24 be binding for that taxable year and all subsequent
25 taxable years.”

1 (2) SAVINGS CLAUSE.—Nothing in section
 2 1033(k) of the Internal Revenue Code of 1986, as
 3 added by subsection (a), affects Federal or State
 4 regulatory policy respecting the extent to which any
 5 acquisition premium paid in connection with the
 6 purchase of an asset in a qualifying electric trans-
 7 mission transaction can be recovered in rates.

8 (3) EFFECTIVE DATE.—The amendments made
 9 by this subsection shall apply to transactions occur-
 10 ring after the date of enactment of this Act.

11 (b) DISTRIBUTIONS OF STOCK TO IMPLEMENT FED-
 12 ERAL ENERGY REGULATORY COMMISSION OR STATE
 13 ELECTRIC RESTRUCTURING POLICY.

14 (1) IN GENERAL.—Section 355(e)(4) of the In-
 15 ternal Revenue Code of 1986 is amended by redesign-
 16 ating subparagraphs (C), (D), and (E) as subpara-
 17 graphs (D), (E), and (F), respectively, and by in-
 18 serting after subparagraph (B) the following new
 19 subparagraph:

20 “(C) DISTRIBUTIONS OF STOCK TO IMPLE-
 21 MENT FEDERAL ENERGY REGULATORY COMMIS-
 22 SION OR STATE ELECTRIC RESTRUCTURING
 23 POLICY.—

24 “(i) Paragraph (1) shall not apply to
 25 any distribution that is a qualifying elec-

1 tric transmission transaction. For purposes
2 of this subparagraph, a ‘qualifying electric
3 transmission transaction’ means any dis-
4 tribution of stock in a corporation whose
5 primary trade or business consists of pro-
6 viding electric transmission services, where
7 such stock is later acquired (or where the
8 assets of such corporation are later ac-
9 quired) by another person that is an inde-
10 pendent transmission company.

11 “(ii) INDEPENDENT TRANSMISSION
12 COMPANY.—For purposes of this sub-
13 section, the term ‘independent trans-
14 mission company’ means—

15 “(I) a regional transmission or-
16 ganization approved by the Federal
17 Energy Regulatory Commission,

18 “(II) a person (x) who the Fed-
19 eral Energy Regulatory Commission
20 determines in its authorization of the
21 transaction under section 203 of the
22 Federal Power Act is not a ‘market
23 participant’ within the meaning of
24 such Commission’s rules applicable to
25 regional transmission organizations,

1 and (y) whose transmission facilities
2 transferred as a part of such quali-
3 fying electric transmission transaction
4 are placed under the operational con-
5 trol of a Federal Energy Regulatory
6 Commission-approved regional trans-
7 mission organization within the period
8 specified in such order, but later than
9 the close of the replacement period (as
10 defined in section 1033(k)(2)), or

11 “(III) in the case of facilities
12 subject to the exclusive jurisdiction of
13 the Public Utility Commission of
14 Texas, a person that is approved by
15 that commission as consistent with
16 Texas State law regarding an inde-
17 pendent transmission organization.”

18 (2) EFFECTIVE DATE.—The amendments made
19 by this subsection shall apply to distributions occur-
20 ring after the date of enactment of this Act.

1 **SEC. 4. CERTAIN AMOUNTS RECEIVED BY ELECTRIC UTILI-**
 2 **TIES EXCLUDED FROM GROSS INCOME AS**
 3 **CONTRIBUTIONS TO CAPITAL.**

4 (a) IN GENERAL.—Subsection (c) of section 118 of
 5 the Internal Revenue Code of 1986 (relating to special
 6 rules for water and sewage disposal utilities) is amended—

7 (1) in the heading, by striking “WATER AND
 8 SEWAGE DISPOSAL” and inserting “CERTAIN”.

9 (2) in paragraph (1)—

10 (A) in the lead-in for paragraph (1), by
 11 striking “water or,” and inserting “electric en-
 12 ergy, water, or”, and

13 (B) in subparagraph (B), by striking
 14 “water or” and inserting “electric energy (but
 15 not including assets used in the generation of
 16 electricity), water, or”,

17 (3) in paragraph (2)(A)(ii), by striking “water
 18 or” and inserting “electric energy (but not including
 19 assets used in the generation of electricity), water,
 20 or”, and

21 (4) in paragraph (3)—

22 (A) in subparagraph (A), by inserting
 23 “such term shall include amounts paid as cus-
 24 tomer connection fees (including amounts paid
 25 to connect the customer’s line to an electric line

1 or a main water or sewer line) and” after “ex-
 2 cept that”, and

3 (B) in subparagraph (C), by striking
 4 “water or” and inserting “electric energy,
 5 water, or”.

6 (b) EFFECTIVE DATE.—The amendments made by
 7 subsection (a) shall apply to amounts received after the
 8 date of enactment of this Act.

9 **SEC. 5. TAX TREATMENT OF NUCLEAR DECOMMISSIONING**
 10 **FUNDS.**

11 (a) INCREASE IN AMOUNT PERMITTED TO BE PAID
 12 INTO NUCLEAR DECOMMISSIONING RESERVE FUND.—
 13 Subsection (b) of section 468A of the Internal Revenue
 14 Code of 1986 is amended to read as follows:

15 “(b) LIMITATION ON AMOUNTS PAID INTO FUND.—

16 “(1) IN GENERAL.—The amount which a tax-
 17 payer may pay into the Fund for any taxable year
 18 during the funding period shall not exceed the level
 19 funding amount determined pursuant to subsection
 20 (d), except—

21 “(A) where the taxpayer is permitted by
 22 Federal or State law or regulation (including
 23 authorization by a public service commission) to
 24 charge customers a greater amount for nuclear
 25 decommissioning costs, in which case the tax-

1 payer may pay into the Fund such greater
2 amount, or

3 “(B) in connection with the transfer of a
4 nuclear powerplant, where the transferor or
5 transferee (or both) is required pursuant to the
6 terms of the transfer to contribute a greater
7 amount for nuclear decommissioning costs, in
8 which case the transferor or transferee (or
9 both) may pay into the Fund such greater
10 amount.

11 “(2) CONTRIBUTIONS AFTER FUNDING PE-
12 RIOD.—Notwithstanding any other provision of this
13 section, a taxpayer may make deductible payments
14 to the Fund in any taxable year between the end of
15 the funding period and the termination of the license
16 issued by the Nuclear Regulatory Commission for
17 the nuclear powerplant to which the Fund relates
18 provided such payments do not cause the assets of
19 the Fund to exceed the nuclear decommissioning
20 costs allocable to the taxpayer’s current or former
21 interest in the nuclear powerplant to which the Fund
22 relates. The foregoing limitation shall be applied by
23 taking into account a reasonable rate of inflation for
24 the nuclear decommissioning costs and a reasonable

1 after-tax rate of return on the assets of the Fund
2 until such assets are anticipated to be expended.”

3 (b) DEDUCTION FOR NUCLEAR DECOMMISSIONING
4 COSTS WHEN PAID.—Paragraph (2) of section 468A(c)
5 of such Code is amended to read as follows:

6 “(2) DEDUCTION OF NUCLEAR DECOMMISS-
7 SIONING COSTS.—In addition to any deduction under
8 subsection (a), nuclear decommissioning costs paid
9 or incurred by the taxpayer during any taxable year
10 shall constitute ordinary and necessary expenses in
11 carrying on a trade or business under section 162.”

12 (c) LEVEL FUNDING AMOUNTS.—Subsection (d) of
13 section 468A of such Code is amended to read as follows:

14 “(d) LEVEL FUNDING AMOUNTS.—

15 “(1) ANNUAL AMOUNTS.—For purposes of this
16 section, the level funding amount for any taxable
17 year shall equal the annual amount required to be
18 contributed to the Fund in each year remaining in
19 the funding period in order for the Fund to accumu-
20 late the nuclear decommissioning costs allocable to
21 the taxpayer’s current or former interest in the nu-
22 clear powerplant to which the Fund relates. The an-
23 nual amount described in the foregoing sentence
24 shall be calculated by taking into account a reason-
25 able rate of inflation for the nuclear decommis-

1 sioning costs and a reasonable after-tax rate of re-
2 turn on the assets of the Fund until such assets are
3 anticipated to be expended.

4 “(2) FUNDING PERIOD.—The funding period
5 for a Fund shall end on the last day of the last tax-
6 able year of the expected operating life of the nu-
7 clear powerplant.

8 “(3) NUCLEAR DECOMMISSIONING COSTS.—For
9 purposes of this section, the term ‘nuclear decom-
10 missioning costs’ shall mean all costs to be incurred
11 in connection with entombing, decontaminating, dis-
12 mantling, removing, and disposing of a nuclear pow-
13 erplant, and shall include all associated preparation,
14 security, fuel storage, and radiation monitoring
15 costs. The taxpayer may identify such costs by ref-
16 erence either to a site-specific engineering study or
17 to the financial assurance amount calculated pursu-
18 ant to section 50.75 of title 10 of the Code of Fed-
19 eral Regulations. The term shall include all such
20 costs which, outside of the decommissioning context,
21 might otherwise be capital expenditures.”

22 “(d) EFFECTIVE DATE.—The amendments made by
23 this section shall apply to amounts paid after June 30,
24 2000, in taxable years ending after such date.

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